POLICY ISSUE
(Information)

October 25, 2007 SECY-07-0189

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: STAFF CONSIDERATIONS REGARDING INCREASED OPENNESS AND TRANSPARENCY IN THE SECURITY INSPECTION PROGRAMS

PURPOSE:

To inform the Commission of the staff's: (1) current thinking about providing additional security inspection information to the general public without jeopardizing security or revealing actual or potential vulnerabilities and thereby make the security inspection programs for power reactors, fuel facilities, and other licensees more transparent; and (2) plans to discuss potential options at upcoming public meetings on security matters.

The staff plans to discuss its current thinking on future openness initiatives at public meetings to gain insights and feedback from interested stakeholders. The staff would then report back to the Commission any significant feedback from the meetings and request the Commission's approval to implement an option to increase transparency and public availability of security inspection information.

SUMMARY:

The staff has identified various considerations to increase the public awareness and openness of the NRC's security oversight program at operating power reactors and other licensed facilities and activities. The staff plans to hold public meetings to discuss these considerations which include more transparent information in the results of security inspections, reinstating public reporting of PI results, making NRC security inspection procedures and end-of-cycle and mid-cycle security cornerstone assessment letters public, and possibly recombining the security cornerstone with the other six Reactor Oversight Process (ROP) cornerstones.

CONTACT: Ralph Costello, NSIR/DSO
(301) 415-6821

BACKGROUND:

On February 5, 2004, the staff provided the Commission with a set of options and a full discussion of pertinent issues associated with the treatment of security information under the ROP (SECY-04-0020, “Treatment of Physical Protection Under the Reactor Oversight Process”). The paper presented six options for the security cornerstone.

The options ranged from the resumption of the process in place before September 11, 2001, to complete removal of the security cornerstone from the ROP and complete withholding of all security-related information from the public. In its Staff Requirements Memorandum (SRM) dated March 29, 2004, the Commission directed the staff to maintain the security cornerstone within the ROP, but make no security oversight information publicly available. The staff was directed to develop a separate process to address how security-related inspection findings would be considered when determining the appropriate agency response.

Further, the staff was directed to develop a classified report to Congress describing the results of force-on-force exercises and other security baseline inspections. An unclassified version is also submitted to Congress and issued to the public describing the U.S. Nuclear Regulatory Commission’s (NRC) assessment of general plant performance in security. The reports on security response evaluations were subsequently established as a statutory requirement in the Energy Policy Act of 2005. The staff implemented the Commission decision and announced it to the public on August 4, 2004. The announcement included the Commission commitment to provide pertinent information to State and local officials and other Federal agencies.

On May 12, 2005, the staff sent to the Commission a revised method for assessing security performance of nuclear power reactor licensees (SECY-05-0082, “Revised Assessment Process for the Security Cornerstone of the Reactor Oversight Process”). The staff described the development and initial implementation of a security assessment process that was similar to, but independent of, the reactor safety assessment process (the ROP). The staff’s plan also noted that, under the proposed processes, most security-related information would not be publicly available. Specifically, the following would be withheld from public disclosure: (1) schedules for planned security inspections; (2) reports for and findings from security inspections; and (3) security-related NRC inspection manual chapters (IMCs), inspection procedures, and temporary inspection instructions.

However, to provide as much information to stakeholders as possible and to improve security-related information to State and Federal partners who may respond or assist during a security event at a commercial power reactor, the staff added a new action to its proposed security cornerstone action matrix entitled "External Communications," in which the staff provides more information to States and other security stakeholders. This action helps to: (1) ensure that State officials, Department of Homeland Security, Congress, and other Federal agencies, as necessary, are appropriately and promptly informed of performance changes in a licensee's security program; and (2) enhance the transparency to authorized officials of the security assessment process within the security ROP.

In its SRM dated August 15, 2005, the Commission approved the staff's proposal for assessing the security performance of reactor licensees. The staff issued the new process via IMC 0320, “Operating Reactor Security Assessment Program,” on August 22, 2005. The Commission also

directed the staff to: (1) share with the Commission options for making further progress on openness with the security portion of the reactor oversight process; and in particular, (2) recommend whether it is feasible to make inspection reports publicly available after completion of long-term corrective actions.

The staff responded to the August 15, 2005, SRM with SECY-06-0036, "Public Disclosure Options Within the Security Cornerstone of the Reactor Oversight Process." In the SECY paper, the staff presented three options to the Commission, ranging from no change in the then-current process of withholding all security-related information, to providing redacted security inspection reports. In an SRM dated April 4, 2006, the Commission approved an option to make the cover letters to security inspection reports public without revealing any specifics of findings associated with the inspection. The staff implemented the change with a revision to IMC 0612, "Power Reactor Inspection Reports," on June 29, 2006.

In SECY-07-0008, "Evaluation of Revised Security Oversight Process for Nuclear Power Reactors," the staff reported the status of the first full year's implementation of the separate oversight process for the security cornerstone of the ROP. In that paper, the staff informed the Commission that it planned to make one change to the publicly available cover letters for security inspection reports to align with the then-recent changes in the ROP regarding identification of cross-cutting issues. The staff subsequently made the necessary program modifications to allow mention in the cover letters for security inspection reports whether any security findings had cross-cutting aspects associated with them. This change aids the staff in determining whether or not it needs to use security-related findings in determining whether a licensee has a substantive cross-cutting issue and can make that determination solely on publicly available information.

In SECY-07-0032, "Recommended Staff Actions regarding Correspondence with Allegers Involving Security-Related Concerns," the staff made a recommendation to the Commission to increase, under certain conditions, the amount of information the agency makes available to allegers regarding agency followup of allegations. For instance, if an allegation was determined to be of only minor significance, then the NRC's closure letter to the alleger would include a description of the actions taken by the staff in evaluating and determining the validity of the allegation. The Commission approved the staff's changes to the allegation process for closing security-related allegations in its SRM dated March 28, 2007.

In its August 31, 2007, SRM related to SECY-07-0129, "Revisions to Policy Governing Public Availability of Information associated with Category I Fuel Facilities," the Commission approved, with some modifications, the staff's recommendation to apply NRC's guidance for Sensitive Unclassified Non-Safeguards Information to documents related to Category I fuel facilities. The staff's current thinking on a framework for increasing openness and transparency in the security inspection program for these facilities as well as others is provided below.

DISCUSSION:

Security Inspection Information Publicly Available Before September 11, 2001

Before September 11, 2001, almost all security-related information regarding the inspection and assessment of the security cornerstone (then called the physical protection cornerstone) of the ROP was publicly available. Only information designated as safeguards information (SGI) and certain other site-related information designated as "proprietary information" was not publicly available. Separate security inspection reports were written and withheld from the public if the report contained SGI or proprietary information; otherwise the security inspection information was contained in a public consolidated ROP inspection report. Comparable controls were in place for fuel cycle and other activities.

Non-SGI summaries of all security-related inspection findings for nuclear power plants were also entered into the Plant Issues Matrix (PIM) of the agency's Reactor Program System (RPS). As the PIM was and still is updated and posted on the public ROP Web pages, the inspection report containing SGI itself was not available to the general public. The information available to the public also included the assessed significance of the findings, as well as the performance indicators reported by the licensees each calendar quarter.

Other program documents, which included the security cornerstone's role in the ROP and all of the security-related inspection procedures, were publicly available. The assessment process also provided the regions' inspection schedules to the public, which included the security inspections. Therefore, the agency's assessment of security for each reactor and the process by which the assessment was made was available to the general public.

Security Inspection Information Currently Publicly Available

Based on a request from the Commission following September 11, 2001, the staff suggested options to the Commission to separate the assessment of security from the other ROP cornerstones. The Commission approved an option that maintained the security cornerstone within the ROP framework and directed the staff to "make no information publicly available." The staff had previously stopped issuing public security inspection reports and stopped adding summaries of security findings into the Reactor Program System. Therefore, on August 4, 2004, the staff removed the cornerstone's assessment from the NRC's public Web pages and all security-related inspection information from the public domain. The only information that remained public was IMC 0320, which described the overall process of assessing security separate from the ROP and which included an action matrix for use with security assessment inputs separate from the inputs of the other ROP cornerstones.

Then, in 2006, the Commission approved a staff recommendation to make the cover letters to security inspection reports public. The only information that was to be contained in the public cover letters was acknowledgment that the inspection was conducted, the number of findings of very low significance (i.e., green) and, if applicable, acknowledgment that some findings may be of greater significance. In adopting these policies, the NRC recognized that additional information would likely have to be disclosed should a Freedom of Information Act request be received for an inspection report, although to date none have been received. In January 2007, the staff informed the Commission that cross-cutting aspects of security findings would be

mentioned in the cover letters to allow the regional staff to use the information when making a determination of “substantive” cross-cutting issues for a power reactor site.

Considerations by the Staff

The staff has developed a number of approaches that would increase the public awareness and openness of the NRC’s security inspection program at operating power reactors and other licensed facilities and activities. The staff plans to discuss the following possible approaches with stakeholders:

1. Add additional detail to the annual public report to Congress on security oversight of operating power reactors and Category I fuel cycle facilities by providing a brief description and significance of security inspection findings.

2. Add additional detail to the public cover letters for security inspection reports by providing the cornerstone key attribute (relative to power reactors) and significance, of security inspection findings.

3. Add additional detail to both the public cover letters for security inspection reports and the annual public report to Congress on security oversight of operating power reactors and Category I fuel cycle facilities by providing brief descriptions or cornerstone key attributes (relative to power reactors), and significance of security inspection findings.

Other Openness Considerations

The staff is also considering increasing openness in other areas of its oversight and assessment of security at power reactors. This includes reinstating public reporting of PI results, making public NRC security inspection procedures and end-of-cycle and mid-cycle security cornerstone assessment letters, and possibly recombining the security cornerstone with the other six ROP cornerstones. These will also be discussed at the public meetings mentioned above. While these topics are more closely related to the oversight process for power reactors, the staff will apply, as appropriate, any initiatives the Commission ultimately approves to fuel facilities, independent spent fuel storage installations, and other licensees.

COMMITMENT:

After the staff holds the public meetings on openness of the NRC’s security inspection programs and other aspects of its security oversight process, the staff will report to the Commission any significant feedback and considerations from the meetings and provide the Commission its recommendations relative to the transparency of the security inspection program for power reactors, fuel facilities, independent spent fuel storage installations, and other licensees.

RESOURCES:

The staff estimates the resources necessary to hold the public meetings and report on its results to be approximately 960 hours (0.66 full-time equivalents [FTE]). The fiscal year 2008 budget for program development and maintenance is 1.9 FTE. This effort will be accomplished with existing resources.

COORDINATION:

The Office of the General Counsel reviewed this paper and has no legal objection. The Chief Financial Officer reviewed this package and determined that it has no financial impact.

/RA/

Luis A. Reyes
Executive Director
for Operations

COORDINATION:

The Office of the General Counsel reviewed this paper and has no legal objection. The Chief Financial Officer reviewed this package and determined that it has no financial impact.

/RA/
Luis A. Reyes
Executive Director
for Operations

DISTRIBUTION:
DSO R/f
RidNsirMailCenter
RidsEdoMailRoom (W200700317)

ADAMS Accession Number: ML072040311 **WITS 200700317**

OFFICE	NSIR/RSOB	NSIR/RSOB	NSIR/RSOB	Tech Ed	NSIR/SPEB	NSIR/DSO:DD	NSIR/DSP:D
NAME	SStein	RCostello	BWestreich (RCostello for)	LAGulp	RAlbert (RCorreia for)	RCorreia	PHolahan
DATE	07/13/07	07/16/07	07/16/07	08/06/07	07/23/07	07/23/07	09/13/07
OFFICE	DSO:D	NSIR/PMDA:D	OE:D	OGC	NMSS:D	NRR:D	RI:RA
NAME	DDorman	MCohen (CSchum)	CCarpenter	TRothschild	MWeber	JDyer (BBoger for)	SCollins (JTrapp for)
DATE	08/07/07	09/13/07	08/15/07	07/24/07	09/25/07	08/03/07	08/16/07
OFFICE	RII:RA	RIII:RA	RIV:RA	CFO	NSIR:D	EDO	
NAME	WTravers (JShea for)	JCaldwell (MSatorious for)	BMallett (PGwynn for)	WMcCabe (LBarnett for)	RZimmerman (WDean for)	LReyes	
DATE	08/21/07	08/24/07	09/04/07	08/24/07	09/28/07	10/25/07	

OFFICIAL RECORD COPY